

## 37 Am. Jur. 2d Fraud and Deceit § 86

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### Fraud and Deceit

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#### IV. False Representations

##### C. Matters of Futurity; Promises and Statements of Intention

###### 1. In General; Statements as to Events in Future

## § 86. Exceptions and qualifications, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  12

If the person making the statement as to a future event is guilty of an actual fraudulent intent, and makes the misrepresentation with the intention of deceiving and defrauding the other party and accomplishes this result to the latter's injury, fraud may, under many circumstances, be predicated thereon, notwithstanding the future nature of the representation. This conclusion is reached frequently on the theory that a person's intention or belief is a matter of fact and that, therefore, if a misrepresentation is made with regard to the same, the misrepresentation is one of fact.<sup>1</sup> Where a person fraudulently and positively, as with personal knowledge, states that something is to be done or is to occur when he or she knows that it is not to be done or to occur, the statement will support an action in fraud. This is not a case of prophecy or predication of something that it is merely hoped or expected will occur in the future but a specific affirmation of an arrangement under which something is to occur where the party making the affirmation knows perfectly well that no such thing is to occur; such statements and representations, when false, are actionable.<sup>2</sup> False representations as to future events will constitute fraud where these events depend upon the acts of the party making the representations and form the inducement whereby the other party is led into the transaction,<sup>3</sup> or most often where the future event is within the control of the person making the representation,<sup>4</sup> or where the speaker knows that the hearer understands the speaker to mean that facts within the speaker's knowledge warrant the expectations being raised,<sup>5</sup> or where one knows that the other party is guided by his or her statements.<sup>6</sup>

A representation regarding future conduct can, in some situations, give rise to constructive fraud.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Under Kentucky law, statement as to future conduct may form basis for misrepresentation claim if made with intent to induce

other party to enter into contract. *C.A.F. & Associates, LLC v. Portage, Inc.*, 913 F. Supp. 2d 333 (W.D. Ky. 2012).

**[END OF SUPPLEMENT]**

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**Footnotes**

- <sup>1</sup> *Polusky v. Allstate Petroleum, Inc.*, 180 So. 2d 815 (La. Ct. App. 4th Cir. 1965); *Thieman v. Thieman*, 218 S.W.2d 580 (Mo. 1949); *City of Houston v. Howe & Wise*, 373 S.W.2d 781 (Tex. Civ. App. Houston 1963), writ refused n.r.e., (Apr. 22, 1964); *Weir v. School Dist. No. 201, Klickitat County*, 200 Wash. 172, 93 P.2d 308, 123 A.L.R. 1057 (1939).
- <sup>2</sup> *Outlook Windows Partnership v. York Intern. Corp.*, 112 F. Supp. 2d 877, 43 U.C.C. Rep. Serv. 2d 546 (D. Neb. 2000) (applying Nebraska law).  
Representations that property bought for a warehouse would not be flooded in the future have been held to support a charge of fraud where the possibility of flooding existed, and the representor was apparently aware of it. *People's Furniture & Appliance Co. v. Healy*, 365 Mich. 522, 113 N.W.2d 802 (1962).
- <sup>3</sup> *Elastic Paint & Mfg. Co. v. Johnson*, 127 Or. 647, 271 P. 996 (1928); *Tunkle v. Padgett*, 160 S.C. 274, 158 S.E. 693 (1931); *Palmetto Bank & Trust Co. v. Grimsley*, 134 S.C. 493, 133 S.E. 437, 51 A.L.R. 42 (1926).  
Liability based on promises and statements of intention, generally, see §§ 87 to 100.
- <sup>4</sup> *Outlook Windows Partnership v. York Intern. Corp.*, 112 F. Supp. 2d 877, 43 U.C.C. Rep. Serv. 2d 546 (D. Neb. 2000) (applying Nebraska law); *Ryann Spencer Group, Inc. v. Assurance Co. of America*, 275 S.W.3d 284 (Mo. Ct. App. E.D. 2008).
- <sup>5</sup> *Davis v. Louisville Trust Co.*, 181 F. 10 (C.C.A. 6th Cir. 1910); *Freggens v. Clark*, 100 N.J. Eq. 389, 135 A. 681 (Ch. 1927); *Russell v. Industrial Transp. Co.*, 113 Tex. 441, 251 S.W. 1034, 51 A.L.R. 1 (Comm'n App. 1923), aff'd, 113 Tex. 441, 258 S.W. 462, 51 A.L.R. 1 (1924).
- <sup>6</sup> *People's Furniture & Appliance Co. v. Healy*, 365 Mich. 522, 113 N.W.2d 802 (1962).
- <sup>7</sup> *Epperly v. Johnson*, 734 N.E.2d 1066 (Ind. Ct. App. 2000).  
As to constructive fraud, see § 25.

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